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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GABRIELLA HERNANDEZ, individually
and on behalf of all others similarly
situated,

Plaintiffs,

v.

THE CONTAINER STORE, INC., a
Texas corporation,

Defendant.

Case No. 2:23-cv-05067-HDV-RAO
Assigned to Hon. Hernan D. Vera

JOINT RULE 26(F) REPORT

Scheduling Conference: November 2,
2023

Time: 10:00 a.m.

Courtroom: 5B

Action filed: May 18, 2023

Removal date: June 26, 2023

JOINT RULE 26(f) REPORT

Plaintiff Gabriella Hernandez (“Plaintiff”) and Defendant The Container Store, Inc. (“Defendant”) (collectively, the “Parties”), through their undersigned counsel, hereby submit this Joint Report.

PRELIMINARY STATEMENT

As explained below, Defendant has filed a Motion to Dismiss Plaintiff’s Complaint in its entirety. The Motion to Dismiss is scheduled to be heard on November 16, 2023. The ruling on the Motion to Dismiss could materially impact the scope and progression of the case. The parties have met and conferred to prepare this Joint Rule 26(f) Report and further agree and jointly seek leave of Court to amend the Joint Rule 26(f) Report, to among other things, include a Class Certification Plan, and to exchange initial disclosures, within 30 days of the ruling on the Motion to Dismiss.

1. Statement of the Case:

Plaintiff: Defendant provides videos on its website at www.containerstore.com (the “Website”) to consumers. Each video allows Defendant to secretly collect unique personally identifiable information (“PII”) about consumer viewers, which Defendant then reports to Google alongside the title of every video watched. Defendant then monetizes the secretly harvested PII by bombarding unsuspecting visitors with targeted marketing based upon their video viewing habits. Defendant’s actions constitute a violation of the Video Privacy Protection Act, 18 U.S.C. § 2710 (“VPPA”). As such, Defendant is liable to each class member for \$2,500 per violation.

Defendant: Defendant denies and disputes each of Plaintiff’s allegations and denies any wrongdoing with respect to its data collection practices. Moreover, Defendant is not liable under the VPPA because (i) it is not a video tape service provider, (ii) Plaintiff is not a consumer subject to the VPPA’s protections, and (iii) Defendant has not disclosed to any third-parties data that would constitute PII under the VPPA.

1 Accordingly, Defendant filed a motion to dismiss which is set for hearing on November
2 16, 2023.

3 **2. Subject Matter Jurisdiction:**

4 The Parties agree that this Court has subject matter jurisdiction over this action
5 pursuant to 28 U.S.C. § 1331 because it arises under the VPPA, a federal law.

6 **3. Legal Issues:**

7 The central legal issues involve the applicability of the VPPA to Plaintiff's claims.
8 Plaintiff asserts, as set forth above, that she states a claim under the VPPA and is entitled
9 to recovery thereunder for herself and the proposed Class. Defendant denies that the
10 VPPA applies or that Plaintiff has been harmed or is entitled to any relief whatsoever.

11 **4. Parties and Evidence:**

12 **Plaintiff:** Plaintiff's principal witness will be Plaintiff herself, together with
13 potential experts regarding the specific facts and allegations detailed in the Complaint.
14 Plaintiff will also call witnesses identified by Defendant with knowledge concerning the
15 Website, the videos thereon and the information collected thereby, and violations of the
16 VPPA. Plaintiff will coordinate and cooperate with Defendant in disclosures of
17 documents and witnesses during the course of discovery.

18 **Defendant:** Defendant anticipates calling both expert and fact witnesses at trial
19 concerning its website, the videos thereon, and its data practices.

20 **5. Damages:**

21 Plaintiff asserts that Defendant is liable to each class member for \$2,500 in
22 statutory damages in accordance with the VPPA.

23 **6. Insurance:**

24 The Parties are unaware of any insurance coverage applicable to the claims in this
25 case at this time.
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1 **7. Motions:**

2 **(a) Procedural Motions:**

3 Defendant has filed a Motion to Dismiss the matter and the Parties have fully
4 briefed the matter. The hearing is set for November 16, 2023 at 10:00 a.m.

5 **(b) Dispositive Motions:**

6 Both Parties anticipate filing motions for summary judgment and/or
7 summary adjudication.

8 **(c) Class Certification Motion:**

9 The Parties propose March 1, 2024, as the deadline for filing a motion for
10 class certification.

11 **8. Discovery:**

12 **(a) Status of Discovery:**

13 For efficiency and in light of the pending motion to dismiss, the parties have
14 agreed to exchange initial disclosures 30 days after the ruling on the motion to
15 dismiss.

16 The parties intend to conduct discovery, including written discovery and
17 depositions, on class certification issues. The Parties also anticipate serving
18 written discovery, including interrogatories, requests for admission, requests for
19 production of documents, and deposition notices, regarding Plaintiff's VPPA
20 claims and Defendant's defenses to those claims.

21 The Parties do not believe that phased or bifurcated discovery is appropriate
22 given that merits and class issues are likely to overlap.

23 The Parties do not anticipate any discovery disputes; however, the Parties
24 will meet and confer and will cooperate to ensure that discovery is completed
25 efficiently.

26 **(b) Discovery Plan**

27 All fact and expert discovery, including discovery motions (which the
28 Parties do not anticipate) should be completed by July 16, 2024.

1 (c) **Discovery Cut-Off:**

2 Fact discovery shall be completed by June 11, 2024.

3 (d) **Expert Discovery:**

4 Expert discovery shall be completed by July 16, 2024.

5 (e) **Settlement Conference/Alternative Dispute Resolution (ADR):**

6 The Parties agree to discuss a resolution at the appropriate time. The Parties
7 agree to ADR Procedure No. 3.

8 (f) **Trial:**

9 i. **Trial Estimate:**

10 The Parties estimate a five day trial should a class be certified.

11 ii. **Jury or Court Trial:**

12 Plaintiff requests a jury trial. Defendant requests a bench trial.

13 iii. **Consent to Trial Before a Magistrate Judge:**

14 The Parties do not consent to have this matter heard by a magistrate
15 judge.

16 iv. **Lead Trial Counsel:**

17 Scott J. Ferrell, David W. Reid and Victoria C. Knowles of Pacific
18 Trial Attorneys will be trial counsel for Plaintiff.

19 Amy P. Lally, Ian M. Ross, and Sophie V. Green will be trial counsel
20 for Defendant.

21 (g) **Independent Expert or Master:**

22 The Parties do not anticipate the need for an independent expert or
23 master at this stage of the litigation.

24 (h) **Other Issues:**

25 The Parties do not have additional issues to address at this stage of the
26 litigation.

1 DATED: October 27, 2023

Respectfully submitted,

3 By: /s/Scott J. Ferrell

4 Scott J. Ferrell, Esq.

5 *Attorneys for Plaintiff and the putative Class*

7 DATED: October 27, 2023

Respectfully submitted,

9 By: /s/Amy P. Lally

10 Amy P. Lally, Esq.

11 *Attorneys for Defendant The Container Store, Inc.*

JUDGE HERNAN D. VERA
SCHEDULE OF PRETRIAL AND TRIAL DATES WORKSHEET

Please complete this worksheet jointly and file it with your Joint Rule 26(f) Report.

The Court ORDERS the parties to make every effort to agree on dates.

Case No. 2:23-cv-5067-HDV-RAOx		Case Name: Hernandez v. The Contianer Store, Inc., et al.		
Trial and Final Pretrial Conference Dates	Timing	Pl(s)' Date mm/dd/yyyy	Def(s)' Date mm/dd/yyyy	Court Order mm/dd/yyyy
Check one: <input type="checkbox"/> Jury Trial or <input type="checkbox"/> Court Trial (Tuesday at 9:00 a.m.) Estimated Duration: 5 Days	Within 18 months after Complaint filed	11/18/2024	11/12/2024	<input type="checkbox"/> Jury Trial <input type="checkbox"/> Court Trial _____ Days
Final Pretrial Conference ("FPTC") [L.R. 16] (Tuesday at 10:00 a.m.)	21 days before trial	10/22/2024	10/22/2024	
Hearing on Motions In Limine	28 days before trial	10/22/2024	10/15/2024	
Event	Weeks After Scheduling Conference	Pl(s)' Date mm/dd/yyyy	Def(s)' Date mm/dd/yyyy	Court Order mm/dd/yyyy
Last Date to <u>Hear</u> Motion to Amend Pleadings /Add Parties	6	12/18/2024	12/14/2023	
Event¹	Weeks Before FPTC	Pl(s)' Date mm/dd/yyyy	Def(s)' Date mm/dd/yyyy	Court Order mm/dd/yyyy
Fact Discovery Cut-Off (no later than deadline for <u>filing</u> dispositive motion)	22	08/06/2024	06/11/2024	
Expert Disclosure (Initial)	21	08/20/2024	06/18/2024	
Expert Disclosure (Rebuttal)	19	09/03/2024	07/02/2024	
Expert Discovery Cut-Off	17 ²	09/03/2024	07/16/2024	
Last Date to <u>Hear</u> Motions	11	09/17/2024	08/27/2024	
Deadline to Complete Settlement Conference [L.R. 16-15] <u>Select one:</u> <input type="checkbox"/> 1. Magistrate Judge (<i>with Court approval</i>) <input type="checkbox"/> 2. Court's Mediation Panel <input checked="" type="checkbox"/> 3. Private Mediation	6	03/25/2024	10/01/2024	<input type="checkbox"/> 1. Mag. J. <input type="checkbox"/> 2. Panel <input type="checkbox"/> 3. Private
<u>Trial Filings (first round)</u> • Motions In Limine • Memoranda of Contentions of Fact and Law [L.R. 16-4] • Witness Lists [L.R. 16-5] • Joint Exhibit List [L.R. 16-6.1] • Joint Status Report Regarding Settlement	4	10/21/2024	10/15/2024	

1	• Proposed Findings of Fact and Conclusions of Law [L.R. 52] (<i>court trial only</i>)				
2	Declarations containing Direct				
3	Testimony, if ordered (<i>court trial only</i>)				
4	<u>Trial Filings (second round)</u>	2	11/04/2024	10/29/2024	
5	• Oppositions to Motions In Limine				
6	• Joint Proposed Final Pretrial Conference Order [L.R. 16-7]				
7	• Joint/Agreed Proposed Jury Instructions (<i>jury trial only</i>)				
8	• Disputed Proposed Jury Instructions (<i>jury trial only</i>)				
9	• Joint Proposed Verdict Forms (<i>jury trial only</i>)				
10	• Joint Proposed Statement of the Case (<i>jury trial only</i>)				
11	• Proposed Additional Voir Dire Questions, if any (<i>jury trial only</i>)				
12	Evidentiary Objections to Decls. of Direct Testimony (<i>court trial only</i>)				

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16 *I, Scott J. Ferrell, hereby certify that the content of this document is acceptable*
17 *to all persons required to sign this document and that I obtained the authorizations*
18 *necessary for the electronic signatures of all parties for this document.*

19 */s/ Scott J. Ferrell*
20 Scott J. Ferrell
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CERTIFICATE OF SERVICE

I, Scott J. Ferrell, an attorney, certify that on October 27, 2023, I filed the foregoing **JOINT RULE 26(F) REPORT** via the Court's CM/ECF electronic filing system. A copy of said document will be electronically transmitted to all counsel of record.

/s/ Scott J. Ferrell

Scott J. Ferrell